



the removal of a position from the bargaining unit. The Association charges that the Board is obliged, under RSA 273-A, to bargain the removal of this position from the unit with the Association.

In its answer, the Board denies any violation of RSA 273-A and asserts that the "reorganization" was proper, that it was done for budgetary reasons, that the contract permits the Board to reduce extra duty assignments for budgetary reasons and that the contract does not require the Board to fill extra duty positions with bargaining unit members. The Board asserts it is simply having the duties of athletic director performed by a person who is not a member of the bargaining unit, as it has a right to do.

A hearing was scheduled for August 8, 1985 at which time the NEA/NH representative failed to appear and the case was dismissed. NEA/NH subsequently filed for a rehearing with affidavits and materials attesting to the non-receipt of the hearing notice. The Board objected to the rehearing. The PELRB, mindful of its inability (due to funding) to mail all such notices by certified mail, granted a rehearing.

The rehearing was held on November 7, 1985 at the PELRB's office in Concord, N.H., with all parties represented.

#### FINDINGS OF FACT

At the November hearing, the Board argued in its motion to dismiss (filed April 24, 1985) asserted that the Association had begun the grievance procedure when it protested the Superintendent's action on February 13, 1985 (constituting a level 1 grievance) but subsequently abandoned the grievance procedure, thus constituting an acceptance of the decision rendered at that level.

The Association argued that they had not intended to raise a grievance but rather that this was an issue for the PELRB since the complaint raised is failure to negotiate over a change in the composition of the bargaining unit.

With respect to the negotiations for a new contract (those conducted in January of 1985), testimony was received to indicate that the position of "athletic director" was included in the negotiations, that it was an extra duty, part-time assignment and the two parties did reach agreement on the pay for this position.

Subsequent to the January negotiations, the Superintendent did announce the "reorganization" and the creation of the "Assistant Principal/Athletic Director" position which the School Board did approve (by April the position was called simply "Assistant Principal"). Subsequent advertising for the position included "previous coaching and supervisory" experience as part of the necessary qualifications for the position. The "new" Assistant Principal so had other administrative duties as well.

Testimony revealed that the Athletic Director position was different and distinct from the Physical Education Director in that the Athletic Director did not teach but did supervise coaches and the extra-curricula program; hired coaches, hired officials; scheduled events; prepared budgets; arranged transportation; and ordered equipment.

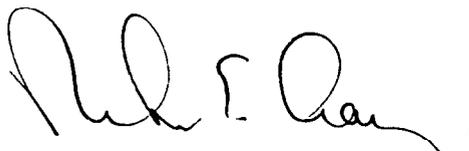
Testimony was heard from the Superintendent that the "reorganization" was for budgetary reasons and that other changes were made for this reason too.

Testimony was received that established that the position of "Athletic Director" was not in the recognition clause of the contract nor in the certification for the bargaining unit (which reads: Professional employees are employees of the Exeter School District whose position requires certification by the State Board of Education under its regulations governing the certification of professional school personnel. Nurses, guidance personnel and librarians shall be defined as professional employees for the purpose of this agreement. Superintendents, assistant superintendents, principals, assistant principals, teacher consultants, business administrators, other persons who spend less than fifty percent of their time in classroom teaching, or persons employed by the State Board of Education, are excluded from this definition of professional employees, in accordance with Article I - Recognition, Agreement September 1, 1975-August 31, 1976.). At the same time, the agreement was reached over what pay would a person receive for the position.

The Association argues that the position shift removes "bargaining unit work" and is therefore subject to negotiation and any unilateral action by management violates at least RSA 273-A:5, I (e). The Board argues that the management has the prerogative to reorganize its work force and that this is what happened and is provided for under RSA 273-A:1.

DECISION AND ORDER

We find the Board's argument compelling. If PELRB were to find for the Association, it would be abdicating its duty to determine the correct bargaining unit and allow this to become a subject of negotiation between the parties, this it cannot do. PELRB must protect employees whom it deems to be in a bargaining unit, regardless of the desire of either party to negotiate some positions out. At the same time, it must protect the right under "managerial policy within the exclusive prerogative of the public employer" (RSA 273-A:1, XI), of the employer to change the "organizational structure" or even the "number of its personnel". Lacking a pattern of change demonstrably for the purpose of evasion of rights conferred by RSA 273-A, PELRB cannot find that the employer is prohibited from reorganizing simply because it would remove "bargaining unit work" nor can it find the School Board guilty of unfair labor practice. The impact of such decisions must, of course, be negotiated insofar as other employees' conditions of employment are effected.



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ROBERT E. CRAIG, CHAIRMAN

Signed this 23rd day of January, 1986.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Richard Roulx and Russell Hilliard present and voting. Also present, Executive Director Evelyn C. LeBrun.